

ABANTE ROOTER AND)	Case No.: 3:23-cv-6496
PLUMBING, INC., individually and)	
on behalf of all others similarly)	<u>CLASS ACTION</u>
situated,)	
)	COMPLAINT FOR VIOLATIONS
Plaintiff,)	OF:
)	
vs.)	1. NEGLIGENT VIOLATIONS OF
)	THE TELEPHONE CONSUMER
)	PROTECTION ACT [47 U.S.C.
LONG FENCE AND HOME LLLP;)	\$227 ET SEQ.]
DOES 1 through 10, inclusive,)	2. WILLFUL VIOLATIONS OF THE
)	TELEPHONE CONSUMER
)	PROTECTION ACT [47 U.S.C.
Defendants.)	\$227 ET SEQ.]
)	
)	DEMAND FOR JURY TRIAL

NATURE OF THE CASE

CLASS ACTION COMPLAINT

1 remedies resulting from the illegal actions of Long Fence and Home LLLP
2 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
3 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
4 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1331 because this case arises
7 under a federal statute, namely the Telephone Consumer Protection Act, 47 U.S.C.
8 § 227 *et seq.*

9 3. Venue is proper in the United States District Court for the Northern
10 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
11 because Defendant does business a substantial portion of the events giving rise to
12 Plaintiff’s claims occurred within this judicial district.

13 **PARTIES**

14 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
15 is a corporation incorporated in the state of California and with its principal place
16 of business Alameda County, California, and is a “person” as defined by 47 U.S.C.
17 § 153 (10).

18 5. Defendant, Long Fence and Home LLLP (“Defendant”) is a general
19 contracting service company, that offers replacement and installation services of
20 windows, roofing and doors; incorporated in Maryland and with its principal place
21 of business in Maryland and is a “person” as defined by 47 U.S.C. § 153 (10).

22 6. The above-named Defendant, and its subsidiaries and agents, are
23 collectively referred to as “Defendants.” The true names and capacities of the
24 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
25 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
26 names. Each of the Defendants designated herein as a DOE is legally responsible
27 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
28 Complaint to reflect the true names and capacities of the DOE Defendants when

1 such identities become known.

2 7. Plaintiff is informed and believes that at all relevant times, each and
3 every Defendant was acting as an agent and/or employee of each of the other
4 Defendants and was acting within the course and scope of said agency and/or
5 employment with the full knowledge and consent of each of the other Defendants.
6 Plaintiff is informed and believes that each of the acts and/or omissions complained
7 of herein was made known to, and ratified by, each of the other Defendants.

8 **FACTUAL ALLEGATIONS**

9 8. Beginning on or around May 18, 2022, Defendant contacted Plaintiff
10 on its cellular telephone, number ending in -6147, in an effort to sell or solicit its
11 services.

12 9. Defendant used an “artificial or prerecorded voice”, as described by
13 *47 U.S.C. § 227(b)(1)(A)* to place its calls to Plaintiff seeking to sell or solicit its
14 business services. At one or more instance during these calls, Defendant utilized
15 an “artificial or prerecorded voice” as prohibited by *47 U.S.C. § 227(b)(1)(A)*.

16 10. Defendant’s calls constituted calls that were not for emergency
17 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

18 11. Defendant’s calls were placed to telephone number assigned to a
19 cellular telephone service for which Plaintiff incurs a charge for incoming calls
20 pursuant to *47 U.S.C. § 227(b)(1)*.

21 12. Plaintiff is not a customer of Defendant’s services and has never
22 provided any personal information, including his cellular telephone number, to
23 Defendant for any purpose whatsoever. Accordingly, Defendant never received
24 Plaintiff’s “prior express consent” to receive calls using an artificial or prerecorded
25 voice on its cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

26 **CLASS ALLEGATIONS**

27 13. Plaintiff brings this action on behalf of itself and all others similarly
28 situated, as a member of the proposed class (hereafter “The Class”) defined as

1 follows:

2
3 All persons within the United States who received any
4 telephone calls from Defendant to said person's cellular
5 telephone made through the use of any artificial or
6 prerecorded voice and such person had not previously
7 consented to receiving such calls within the four years
8 prior to the filing of this Complaint

9 14. Plaintiff represents, and is a member of, The Class, consisting of All
10 persons within the United States who received any telephone calls from Defendant
11 to said person's cellular telephone made through the use of any artificial or
12 prerecorded voice and such person had not previously not provided their cellular
13 telephone number to Defendant within the four years prior to the filing of this
14 Complaint.

15 15. Defendant, its employees and agents are excluded from The Class.
16 Plaintiff does not know the number of members in The Class, but believes the Class
17 members number in the thousands, if not more. Thus, this matter should be
18 certified as a Class Action to assist in the expeditious litigation of the matter.

19 16. Also excluded from The Class is the Court and its staff.

20 17. The Class is so numerous that the individual joinder of all of its
21 members is impractical. While the exact number and identities of The Class
22 members are unknown to Plaintiff at this time and can only be ascertained through
23 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
24 The Class includes thousands of members. Plaintiff alleges that The Class
25 members may be ascertained by the records maintained by Defendant.

26 18. Plaintiff and members of The Class were harmed by the acts of
27 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
28 and Class members via their cellular telephones thereby causing Plaintiff and Class
members to incur certain charges or reduced telephone time for which Plaintiff and

1 Class members had previously paid by having to retrieve or administer messages
2 left by Defendant during those illegal calls, and invading the privacy of said
3 Plaintiff and Class members.

4 19. Common questions of fact and law exist as to all members of The
5 Class which predominate over any questions affecting only individual members of
6 The Class. These common legal and factual questions, which do not vary between
7 Class members, and which may be determined without reference to the individual
8 circumstances of any Class members, include, but are not limited to, the following:

- 9
- 10 a. Whether, within the four years prior to the filing of this Complaint,
11 Defendant made any call (other than a call made for emergency purposes
12 or made with the prior express consent of the called party) to a Class
13 member using any artificial or prerecorded voice to any telephone
14 number assigned to a cellular telephone service;
 - 15 b. Whether Plaintiff and the Class members were damages thereby, and the
16 extent of damages for such violation; and
 - 17 c. Whether Defendant should be enjoined from engaging in such conduct in
18 the future.

19 20. As a person that received numerous calls from Defendant using an
20 artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is
21 asserting claims that are typical of The Class.

22 21. Plaintiff will fairly and adequately protect the interests of the members
23 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
24 class actions.

25 22. A class action is superior to other available methods of fair and
26 efficient adjudication of this controversy, since individual litigation of the claims
27 of all Class members is impracticable. Even if every Class member could afford
28 individual litigation, the court system could not. It would be unduly burdensome
to the courts in which individual litigation of numerous issues would proceed.
Individualized litigation would also present the potential for varying, inconsistent,

1 or contradictory judgments and would magnify the delay and expense to all parties
2 and to the court system resulting from multiple trials of the same complex factual
3 issues. By contrast, the conduct of this action as a class action presents fewer
4 management difficulties, conserves the resources of the parties and of the court
5 system, and protects the rights of each Class member.

6 23. The prosecution of separate actions by individual Class members
7 would create a risk of adjudications with respect to them that would, as a practical
8 matter, be dispositive of the interests of the other Class members not parties to such
9 adjudications or that would substantially impair or impede the ability of such non-
10 party Class members to protect their interests.

11 24. Defendant has acted or refused to act in respects generally applicable
12 to The Class, thereby making appropriate final and injunctive relief with regard to
13 the members of The Class as a whole.

14
15 **FIRST CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**
17 **47 U.S.C. §227 et seq.**

18 25. Plaintiff repeats and incorporates by reference into this cause of
19 action the allegations set forth above at Paragraphs 1-24.

20 26. The foregoing acts and omissions of Defendant constitute numerous
21 and multiple negligent violations of the TCPA, including but not limited to each
22 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

23 27. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
24 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
25 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

26 28. Plaintiff and the Class members are also entitled to and seek
27 injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

29. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

31. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*; and
- Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 18th day of December, 2023.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff